

1 **Adam C. Anderson (Bar No. 024314)**

2 **ANDERSON LAW PLLC**

3 **48 North Macdonald**

4 **Mesa, AZ 85201**

5 **Telephone: (480) 272-5983**

6 **E-Mail: adam@acandersonlaw.com**

7 **Attorney for Plaintiffs**

8
9 **IN THE UNITED STATES DISTRICT COURT**
10 **FOR THE DISTRICT OF ARIZONA**
11 **PHOENIX DIVISION**

12
13 **TINA CHISM, and TERRY CHISM,**

14 **Plaintiffs,**

15 **v.**

16
17 **CAVALRY PORTFOLIO SERVICES, LLC.,**

18
19 **Defendant.**

No.

**COMPLAINT & TRIAL
BY JURY DEMAND**

20
21 NOW COME the Plaintiffs, TINA CHISM and TERRY CHISM, by and through
22 their attorneys, SMITHMARCO, P.C., and for their complaint against the Defendant,
23 CAVALRY PORTFOLIO SERVICES, LLC., Plaintiffs state as follows:

24 **I. PRELIMINARY STATEMENT**

25 1. This is an action for actual and statutory damages for violations of
26 the Fair Debt Collection Practices Act (hereinafter "FDCPA"), 15 U.S.C. §1692,
27 et seq.
28

1 14. At all relevant times, Defendant acted through its duly authorized agents,
2 employees, officers, members, directors, heirs, successors, assigns, principals, trustees,
3 sureties, subrogees, representatives, and insurers.

4 **IV. ALLEGATIONS**

5 **COUNT I: TINA CHISM v. CAVALRY PORTFOLIO SERVICES, LLC.**

6 **VIOLATION OF THE FDCPA**

7 15. Tina re-alleges and incorporates by reference each of the preceding
8 paragraphs in this complaint as though fully set forth herein.

9 16. On or about July 26, 2012, Tina initiated a telephone call to Defendant.

10 17. During the course of the aforesaid telephone conversation between Tina
11 and Defendant, Defendant attempted to collect the Debt from Tina.

12 18. During the course of the aforesaid telephone conversation, Defendant's
13 duly authorized representative informed Tina that he was an attorney.

14 19. Defendant told Tina that if she did not pay the Debt then Defendant would
15 file a lawsuit against Tina.

16 20. Upon information and belief, the duly authorized representative of
17 Defendant who engaged in the aforesaid telephone conversation with Tina was not an
18 attorney.

19 21. Defendant's representation that its duly authorized representative was an
20 attorney was false, deceptive and/or misleading given that, upon information and belief,
21 the duly authorized representative of Defendant who engaged in the aforesaid telephone
22 conversation with Tina was not an attorney.

23 22. Defendant has not filed a lawsuit against Tina for the Debt.

24 23. Upon information and belief, at the time of making the aforementioned
25 threat, Defendant had no intention of filing a lawsuit against Tina for the Debt.

26 24. Upon information and belief, Defendant has no authority to file a lawsuit
27 against Tina for the Debt.

1 25. Upon information and belief, at the time of making the aforementioned
2 threat, Defendant had no authority to file a lawsuit against Tina for the Debt.

3 26. During the course of the aforesaid telephone conversation between Tina
4 and Defendant, Defendant told Tina that she could enter into a payment plan with
5 Defendant relative to the Debt.

6 27. Due to Defendant's representations, as delineated above, Tina believed that
7 she had to enter into a payment plan with Defendant relative to the Debt in order to
8 prevent Defendant from filing a lawsuit against her.

9 28. Defendant suggested that Tina make weekly payments to Defendant in the
10 amount of \$100.00.

11 29. Tina informed Defendant that she could not afford to make weekly
12 payments to Defendant in the amount of \$100.00.

13 30. Tina informed Defendant that she could make payments of \$50.00 a week
14 to Defendant relative to the Debt.

15 31. During the course of the aforesaid telephone conversation, Tina and
16 Defendant agreed that Tina could pay Defendant \$50.00 a week, until the Debt was paid
17 in full.

18 32. During the course of the telephone call, Tina and Defendant agreed that
19 Tina could pay Defendant \$50.00 a week which was to be paid on each Monday of the
20 week, until the Debt was paid in full.

21 33. Tina and Defendant agreed that Tina's first \$50.00 payment to Defendant
22 would be made on Monday July 30, 2012.

23 34. During the course of the telephone call, Defendant informed Tina that it
24 could electronically debit the weekly payments agreed upon by Tina and Defendant from
25 a checking account.

26 35. Tina then provided Defendant with her and Terry's checking account
27 information (hereinafter, "Plaintiffs' Account) so that Defendant could automatically
28

1 withdraw payments from Plaintiffs' Account in accordance with the terms of the payment
2 arrangement entered into between Tina and Defendant.

3 36. Plaintiffs' Account is a joint checking account held by Tina and Terry.

4 37. On or about July 30, 2012, Defendant withdrew \$50.00 from Plaintiffs'
5 Account.

6 38. On or about July 30, 2012, Defendant transferred to Defendant \$50.00 in
7 funds from Plaintiffs' Account.

8 39. On or about July 30, 2012, Defendant successfully transferred the aforesaid
9 funds to Defendant from Plaintiffs' Account.

10 40. On or about August 6, 2012, Defendant withdrew \$50.00 from Plaintiffs'
11 Account.

12 41. On or about August 6, 2012, Defendant transferred to Defendant \$50.00 in
13 funds from Plaintiffs' Account.

14 42. On or about August 6, 2012, Defendant successfully transferred the
15 aforesaid funds to Defendant from Plaintiffs' Account.

16 43. On or about August 13, 2012, Defendant withdrew \$50.00 from Plaintiffs'
17 Account.

18 44. On or about August 13, 2012, Defendant transferred to Defendant \$50.00 in
19 funds from Plaintiffs' Account.

20 45. On or about August 13, 2012, Defendant successfully transferred the
21 aforesaid funds to Defendant from Plaintiffs' Account.

22 46. On or about August 20, 2012, Defendant withdrew \$50.00 from Plaintiffs'
23 Account.

24 47. On or about August 20, 2012, Defendant transferred to Defendant \$50.00 in
25 funds from Plaintiffs' Account.

26 48. On or about August 20, 2012, Defendant successfully transferred the
27 aforesaid funds to Defendant from Plaintiffs' Account.

1 49. On or about August 27, 2012, Defendant withdrew \$50.00 from Plaintiffs'
2 Account.

3 50. On or about August 27, 2012, Defendant transferred to Defendant \$50.00 in
4 funds from Plaintiffs' Account.

5 51. On or about August 27, 2012, Defendant successfully transferred the
6 aforesaid funds to Defendant from Plaintiffs' Account.

7 52. On or about September 4, 2012, Defendant withdrew \$50.00 from
8 Plaintiffs' Account.

9 53. On or about September 4, 2012, Defendant transferred to Defendant
10 \$50.00 in funds from Plaintiffs' Account.

11 54. On or about September 4, 2012, Defendant successfully transferred the
12 aforesaid funds to Defendant from Plaintiffs' Account.

13 55. On or about September 10, 2012, Defendant withdrew \$50.00 from
14 Plaintiffs' Account.

15 56. On or about September 10, 2012, Defendant transferred to Defendant
16 \$50.00 in funds from Plaintiffs' Account.

17 57. On or about September 10, 2012, Defendant successfully transferred the
18 aforesaid funds to Defendant from Plaintiffs' Account.

19 58. On or about September 17, 2012, Defendant withdrew \$50.00 from
20 Plaintiffs' Account.

21 59. On or about September 17, 2012, Defendant transferred to Defendant
22 \$50.00 in funds from Plaintiffs' Account.

23 60. On or about September 17, 2012, Defendant successfully transferred the
24 aforesaid funds to Defendant from Plaintiffs' Account.

25 61. On or about September 24, 2012, Defendant withdrew \$50.00 from
26 Plaintiffs' Account.

27 62. On or about September 24, 2012, Defendant transferred to Defendant
28 \$50.00 in funds from Plaintiffs' Account.

1 63. On or about September 24, 2012, Defendant successfully transferred the
2 aforesaid funds to Defendant from Plaintiffs' Account.

3 64. On or about October 1, 2012, Defendant withdrew \$50.00 from Plaintiffs'
4 Account.

5 65. On or about October 1, 2012, Defendant transferred to Defendant \$50.00 in
6 funds from Plaintiffs' Account.

7 66. On or about October 1, 2012, Defendant successfully transferred the
8 aforesaid funds to Defendant from Plaintiffs' Account.

9 67. On or about October 9, 2012, Defendant withdrew \$50.00 from Plaintiffs'
10 Account.

11 68. On or about October 9, 2012, Defendant transferred to Defendant \$50.00 in
12 funds from Plaintiffs' Account.

13 69. On or October 9, 2012, Defendant successfully transferred the aforesaid
14 funds to Defendant from Plaintiffs' Account.

15 70. On or about October 11, 2012, Tina initiated a telephone call to Defendant
16 wherein Tina informed Defendant to cease debiting payments from Plaintiffs' Account.

17 71. Tina informed Defendant that Plaintiffs' did not have the necessary funds
18 available to continue making \$50.00 weekly payments to Defendant relative to the Debt.

19 72. Defendant informed Tina that it could stop debiting weekly payments from
20 Plaintiffs' Account.

21 73. Defendant told Tina that if payments were no longer made towards the
22 Debt then Defendant would file a lawsuit against her relative to the Debt.

23 74. During the course of the aforesaid telephone conversation between Tina
24 and Defendant, on multiple occasions, Defendant reiterated that if Tina missed a payment
25 relative to the Debt then Defendant would file a lawsuit against her.

26 75. Again, upon information and belief, at the time of making the
27 aforementioned threats, Defendant had no intention of filing a lawsuit against Tina for the
28 Debt.

1 76. Again, upon information and belief, Defendant has no authority to file a
2 lawsuit against Tina for the Debt.

3 77. Again, upon information and belief, at the time of making the
4 aforementioned threats, Defendant had no authority to file a lawsuit against Tina for the
5 Debt.

6 78. Due to Defendant's representations to Tina during the course of the
7 aforesaid telephone conversation, as delineated above, Tina believed that she had to
8 continue making payments to Defendant relative to the Debt in order to prevent
9 Defendant from filing a lawsuit against her.

10 79. Tina requested that she be able to make bi-monthly payments to Defendant,
11 in the amount of \$50.00 each to be applied towards the Debt, as opposed to weekly
12 payments to Defendant in the amount of \$50.00 each.

13 80. During the course of the aforesaid telephone conversation, Tina and
14 Defendant agreed that Tina could pay Defendant on a bi-monthly basis, in the amount of
15 \$50.00 per payment, until the Debt was paid in full.

16 81. During the course of the aforesaid telephone conversation, Tina and
17 Defendant agreed that the next payment Defendant would debit from Plaintiffs' Account
18 would be on October 26, 2012.

19 82. During the course of the aforesaid telephone conversation, Tina and
20 Defendant agreed that after the October 26, 2012, payment then Defendant would debit
21 Plaintiffs' Account every other week in the amount of \$50.00.

22 83. At no time on or prior to October 19, 2012, did Tina request that
23 Defendant change the terms of the payment agreement entered into between her and
24 Defendant on or about October 11, 2012.

25 84. At no time on or prior to October 19, 2012, did Terry request that
26 Defendant change the terms of the payment agreement entered into between Tina and
27 Defendant on or about October 11, 2012.

1 85. On or about October 19, 2012, Defendant withdrew \$50.00 from Plaintiffs'
2 Account.

3 86. On or about October 19, 2012, Defendant transferred to Defendant \$50.00
4 in funds from Plaintiffs' Account.

5 87. On or about October 19, 2012, Defendant successfully transferred the
6 aforesaid funds to Defendant from Plaintiffs' Account.

7 88. Tina did not provide Defendant with consent to withdraw \$50.00 from
8 Plaintiffs' Account on October 19, 2012.

9 89. Terry did not provide Defendant with consent to withdraw \$50.00 from
10 Plaintiffs' Account on October 19, 2012.

11 90. On or about October 19, 2012, Defendant withdrew funds from Plaintiffs'
12 Account without having permission to do so.

13 91. Defendant's conduct in withdrawing funds from Plaintiffs' Account, on or
14 about October 19, 2012, without having permission to do so was conduct that was unfair
15 and/or unconscionable.

16 92. On or about October 19, 2012, subsequent to Defendant having withdrawn
17 \$50.00 from Plaintiffs' Account, Tina initiated a telephone call to Defendant wherein
18 Tina informed Defendant that it had withdrawn \$50.00 from Plaintiffs' Account on
19 October 19, 2012.

20 93. During the course of the aforesaid telephone conversation, Defendant
21 acknowledged to Tina that Defendant withdrew \$50.00 from Plaintiffs' Account.

22 94. In its attempts to collect the Debt allegedly owed by Tina, Defendant
23 violated the FDCPA, 15 U.S.C. §1692 in one or more of the following ways:

- 24 a. Used false, deceptive, misleading and unfair or unconscionable means
25 to collect or attempt to collect an alleged debt in violation of 15 U.S.C.
26 §1692e;

- b. Falsely represented either directly and/or by implication that he was an attorney and/or that the communication was from an attorney in violation of 15 U.S.C. §1692e(3);
- c. Threatened to take action that cannot legally or is not intended to be taken in violation of 15 U.S.C. §1692e(5);
- d. Used any false representation or deceptive means to collect or attempt to collect any debt or to obtain information concerning the consumer in violation of 15 U.S.C. §1692e(10);
- e. Used unfair and/or unconscionable means to collect or attempt to collect a debt in violation of 15 U.S.C. §1692f;
- f. Deposited or threatened to deposit a postdated check or other postdated payment instrument prior to the date on such check or instrument in violation of 15 U.S.C. §1692f(4); and,
- g. Was otherwise deceptive and failed to comply with the provisions of the FDCPA.

95. As a result of Defendant's violations as aforesaid, Tina has suffered, and continues to suffer, personal humiliation, embarrassment, mental anguish and emotional distress.

WHEREFORE, Plaintiff, TINA CHISM, by and through her attorneys, respectfully prays for judgment against Defendant as follows:

- a. All actual compensatory damages suffered;
- b. Statutory damages of \$1,000.00;
- c. Plaintiff's attorneys' fees and costs;
- d. Any other relief deemed appropriate by this Honorable Court.

COUNT II: TERRY CHISM v. CAVALRY PORTFOLIO SERVICES, LLC.

VIOLATION OF THE FDCPA

96. Terry re-alleges and incorporates by reference each of the preceding paragraphs in this complaint as though fully set forth herein.

1 97. On or about July 26, 2012, Defendant initiated a telephone call to Terry's
2 son-in-law in an attempt to collect the Debt.

3 98. During the course of the aforesaid telephone conversation between Terry's
4 son-in-law and Defendant, Defendant stated that it was attempting to contact Terry.

5 99. During the course of the aforesaid telephone conversation between Terry's
6 son-in-law and Defendant, Defendant's duly authorized representative informed Terry's
7 son-in-law that said representative was an attorney.

8 100. Defendant further told Terry's son-in-law that it was attempting to contact
9 Terry about a credit card debt that Terry owed.

10 101. Defendant then provided its telephone number to Terry's son-in-law and
11 requested that Terry's son-in-law tell Terry to contact Defendant.

12 102. Terry was informed of the contents of his son-in-law's telephone
13 conversation with Defendant.

14 103. Upon information and belief, the duly authorized representative of
15 Defendant who engaged in the aforesaid telephone conversation with Terry's son-in-law
16 was not an attorney.

17 104. Defendant's representation that its duly authorized representative was an
18 attorney was false, deceptive and/or misleading given that, upon information and belief,
19 the duly authorized representative of Defendant who engaged in the aforesaid telephone
20 conversation with Terry's son-in-law was not an attorney.

21 105. Terry did not consent to Defendant communicating with third-parties.

22 106. From in or around July 30, 2012, through in or around October 9, 2012,
23 Defendant withdrew multiple payments from Plaintiffs' Account, which was held jointly
24 between Terry and Tina.

25 107. From in or around July 30, 2012, through in or around October 9, 2012, the
26 payments Defendant withdrew from Plaintiffs' Account were applied towards the Debt.
27
28

1 108. During the course of the aforesaid time period, Defendant withdrew funds
2 from Plaintiffs' Account in accordance with a payment agreement entered into between
3 Tina and Defendant.

4 109. On or about October 11, 2012, Tina and Defendant entered into a modified
5 payment agreement relative to the Debt.

6 110. On or about October 11, 2012, Tina and Defendant agreed that Defendant
7 could withdraw funds from Plaintiffs' Account on a bi-monthly basis, in the amount of
8 \$50.00 per payment, until the Debt was paid in full.

9 111. On or about October 11, 2012, Tina and Defendant agreed that the next
10 payment Defendant would debit from Plaintiffs' Account would be on October 26, 2012.

11 112. At no time on or prior to October 19, 2012, did Tina request that Defendant
12 change the terms of the payment agreement entered into between her and Defendant on or
13 about October 11, 2012.

14 113. At no time on or prior to October 19, 2012, did Terry request that
15 Defendant change the terms of the payment agreement entered into between Tina and
16 Defendant on or about October 11, 2012.

17 114. On or about October 19, 2012, Defendant withdrew \$50.00 from Plaintiffs'
18 Account.

19 115. On or about October 19, 2012, Defendant transferred to Defendant \$50.00
20 in funds from Plaintiffs' Account.

21 116. On or about October 19, 2012, Defendant successfully transferred the
22 aforesaid funds to Defendant from Plaintiffs' Account.

23 117. Tina did not provide Defendant with consent to withdraw \$50.00 from
24 Plaintiffs' Account on October 19, 2012.

25 118. Terry did not provide Defendant with consent to withdraw \$50.00 from
26 Plaintiffs' Account on October 19, 2012.

27 119. On or about October 19, 2012, Defendant withdrew funds from Plaintiffs'
28 Account without having permission to do so.

1 120. Defendant's conduct in withdrawing funds from Plaintiffs' Account, on or
2 about October 19, 2012, without having permission to do so was conduct that was unfair
3 and/or unconscionable.

4 121. In its attempts to collect the debt allegedly owed by Terry, Defendant
5 violated the FDCPA, 15 U.S.C. §1692 in one or more of the following ways:

- 6 a. Communicated with any person other than the consumer for the purpose
7 of acquiring location information about the consumer and stating that
8 the consumer owes any such debt in violation of 15 U.S.C. §1692b(2);
- 9 b. Communicated in connection with the collection of any debt with any
10 person other than the consumer, his attorney, a consumer reporting
11 agency if otherwise permitted by law, the creditor, the attorney of the
12 creditor, or the attorney of the debt collector in violation of 15 U.S.C.
13 §1692c(b);
- 14 c. Used false, deceptive, misleading and unfair or unconscionable means
15 to collect or attempt to collect an alleged debt in violation of 15 U.S.C.
16 §1692e;
- 17 d. Falsely represented either directly and/or by implication that he was an
18 attorney and/or that the communication was from an attorney in
19 violation of 15 U.S.C. §1692e(3);
- 20 e. Used any false representation or deceptive means to collect or attempt to
21 collect any debt or to obtain information concerning the consumer in
22 violation of 15 U.S.C. §1692e(10);
- 23 f. Used unfair and/or unconscionable means to collect or attempt to collect
24 a debt in violation of 15 U.S.C. §1692f;
- 25 g. Deposited or threatened to deposit a postdated check or other postdated
26 payment instrument prior to the date on such check or instrument in
27 violation of 15 U.S.C. §1692f(4); and,

1 h. Was otherwise deceptive and failed to comply with the provisions of the
2 FDCPA.

3 122. As a result of Defendant's violations as aforesaid, Terry has suffered, and
4 continues to suffer, personal humiliation, embarrassment, mental anguish and emotional
5 distress.

6 WHEREFORE, Plaintiff, TERRY CHISM, by and through his attorneys,
7 respectfully prays for Judgment to be entered in favor of Plaintiff and against Defendant
8 as follows:

- 9 a. All actual compensatory damages suffered;
10 b. Statutory damages of \$1,000.00;
11 c. Plaintiff's attorneys' fees and costs;
12 d. Any other relief deemed appropriate by this Honorable Court.

13 **V. JURY DEMAND**

14 123. Plaintiffs hereby demand a trial by jury on all issues so triable.

15 Respectfully Submitted,

16 **By:** s/ Adam Anderson

17 **Attorney for Plaintiffs,**

18 **TINA CHISM**

19 **TERRY CHISM**

20 **December 4, 2012**

21 **Adam C. Anderson (Bar No. 024314)**

22 **ANDERSON LAW PLLC**

23 **48 North Macdonald**

24 **Mesa, AZ 85201**

25 **Telephone: (480) 272-5983**

26 **E-Mail: adam@acandersonlaw.com**

27 **Attorney for Plaintiffs**